

SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION

Methodology for Determining Federal Fiscal Year 2012 (49 CFR Part 26 Section 26.45) “PROPOSED” DBE GOAL

Introduction

The South Carolina Department of Transportation, hereinafter referred to as SCDOT, has prepared this document to describe the methodology used to establish the overall Disadvantaged Business Enterprises (DBE) goal mandated by 49 CFR Part 26 for its federally assisted highway contracts. When establishing this goal, SCDOT relied upon and adhered to guidance provided in the regulations.

49 CFR §26.45 requires a two-step process for setting the overall DBE goal, which should reflect the expected level of DBE participation on SCDOT contracts in absence of discrimination.

SCDOT proposes to establish its Disadvantaged Business Enterprises (“DBE”) overall goal for Federal Fiscal Year 2012 (“FFY 12”) at **11.5%** for new contracts, with **3.7%** to be obtained through race-neutral means and the remaining **7.8%** through race-conscious means.

Annual Goal Methodology Process (Two-Step Process)

Step One: Determining the Base Figure – 49 CFR §26.45(c)

As part of the goals setting process, Step 1 requires SCDOT to begin with a base figure for the relative availability of DBEs. The Base Figure represents the number and relative availability of ready, willing and able DBE firms as compared to all firms ready, willing and able to perform work for SCDOT. This formula utilized to calculate this percentage is listed below:

$$\frac{\text{Ready, Willing \& Able DBEs}}{\text{All Firms Ready, Willing \& Able}} \times 100 = \text{Base Figure (\%)} \\ \text{(Including DBEs and non-DBEs)}$$

As allowed by 49 CFR 26.45(c) (2), SCDOT used its Bidders List to determine the Base Figure. The Bidders List consists of all contractors who bid or quoted on SCDOT preconstruction or construction contracts in the past year. Below, Table 1 summarizes the data gathered from SCDOT’s Bidders List.

Table 1 – Relative Availability of DBEs

FIRMS	Preconstruction	Construction	BOTH
DBE Firms	44	211	255
All Firms	212	1562	1774
% DBE Firms to All Firms	21%	14%	14%

Approximately **7%** of SCDOT's contract dollars are expended on preconstruction contracts and **93%** are expended on construction contracts. Therefore, the above relative availability figures for preconstruction and construction are being weighted accordingly:

[Preconstruction (**7%**) (**21%**) + Construction (**93%**) (**14%**) = Overall **14.5%**]

Based on this, SCDOT has determined its **Base Figure** (relative availability of DBEs) to be **14.5%**.

Step Two: Adjust the Base Figure – 49 CFR 26.45(d)

Regulations require SCDOT to consider all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal.

A. DBEs' Capacity to Perform Work – 49 CFR §26.45(d) (1) (i)

1. Past performance. SCDOT considered the capacity of DBEs to perform work based upon past performance, as measured by the volume of work DBEs have performed in recent years. Table 2 below contains a summary of the expenditures to DBEs on closed projects for the last three (3) completed fiscal years.

Table 2 – <u>Expenditures to DBEs on Closed Projects</u>			
FFY	Total Expenditures	Expenditures to DBEs	DBE %
2008	\$ 678M	\$ 86M	12.7%
2009	\$ 901M	\$ 114M	12.7%
2010	\$ 384M	\$ 36M	9.3%
TOTALS	\$ 1963M	\$ 236M	12.0%

Source: FHWA Uniform Reports of DBE Awards and Payments

Based upon the above information, which reflects the total expenditures (\$1963M) for the last three (3) completed federal fiscal years, DBEs received \$236M or 12.0% of the total expenditures.

2. Other indicators of DBE capacity. In FFY 2010, SCDOT received a total of eighty-nine (89) bids on fourteen (14) state-funded set-aside projects with a total of nineteen (19) DBEs competing. In FFY09, SCDOT received a total of 103 bids on twenty (20) state-funded set-aside projects with a total of twenty-three (23) DBEs competing. In FFY08, SCDOT received a total of forty-four (44) bids on eleven (11) state-funded set-aside projects with eleven (11) DBEs competing. A review of the FFY10 figures indicates a consistent interest and steady participation by DBEs in the state-funded set-aside program.

B. Disparity Studies – 49 CFR §26.45(d) (1) (ii)

SCDOT is unaware of any current disparity studies that would be pertinent to SCDOT's goal setting process. Therefore, such studies were not considered in adjusting the Base Figure.

C. Evidence from Related Fields – 49 CFR §26.45(d) (2)

The regulations also allow an adjustment of the Base Figure based upon consideration of evidence from related fields that show how opportunities for DBEs to form, grow and compete have impacted their numbers in the SCDOT market area. SCDOT is not aware of any evidence of this kind that could be used to adjust the Base Figure. Therefore, SCDOT made no adjustment to the Base Figure based on this type of evidence.

D. Opportunities for DBE Participation in the Federal-Aid FFY12 Program

In adjusting the Base Figure, SCDOT considered the forecasted opportunities that DBEs have to participate in new contracts in the SCDOT's FFY12 federal-aid contracting program.

There will be approximately \$413M in federal funds available to SCDOT in FFY12 for new contracts (see Table 3 below). The FFY12 federal-aid contracting program is expected to consist of the following projects: bridge replacement, interstate maintenance, system preservation and upgrades, as well as safety projects.

A review of the SCDOT DBE Directory establishes the fact that there are certified DBE firms available to perform the types of work items included in the projects expected to be let. If DBEs, who are certified to perform this type of work, are awarded all of the available work, the projects can provide a maximum of approximately 9.2% or \$38M in DBE participation on federal aid assisted projects for FFY12 (see information below in Table 3).

**Table 3 – DBE Contracting Opportunities in FFY12 Federal-Aid Program
(Federal Dollars Only)**

Project Type	Federal Aid Total \$	DBE %	DBE \$
Bridges	\$119 M	10.0%	\$ 11.9M
Interstate Maintenance	\$ 91 M	10.0%	\$ 9.1M
Pavement & Resurfacing	\$ 91 M	6.0%	\$ 5.5M
System Upgrades (MPO/COG)	\$ 71 M	11.5%	\$ 8.2M
Safety	\$ 41 M	8.0%	\$ 3.3M
TOTALS	\$413M	9.2%	\$ 38M

Source: SCDOT Finance, Planning and Engineering

E. Impact of new State contracting opportunities for DBEs in FFY12

SCDOT also considered the impact that new State funded contract opportunities in FFY12 could have on DBE capacity. Total expected new FFY12 state funded contracting opportunities for DBEs is estimated to be \$5.8M (see Table 4 on page 4).

**Table 4 – DBE Contracting Opportunities FFY12 State Funded Contracts
(State Dollars Only)**

Project Type	Total \$	DBE \$	DBE%
"C" Fund	\$ 25.0 M	\$ 1.5 M	6%
Maintenance Resurfacing	\$ 40.0 M	\$ 2.8 M	7%
Guardrail	\$ 1.0 M	\$.17 M	17%
Pavement Marking	\$ 3.4 M	\$.17 M	5%
Concrete	\$ 1.45 M	\$ 1.16 M	80%
TOTALS	\$ 70.85 M	\$ 5.8 M	8.2%

Source: SCDOT Finance, Planning and Engineering

F. Final Adjustment of Base Figure - 49 CFR 26.45 (d)

The Base Figure was calculated at 14.5%, based solely upon the number of ready, willing and able DBEs. The Base Figure does not take into consideration the capacity of the firms or the type of work they perform. The Base Figure must be adjusted based on evidence of past performance and capacity of the DBEs, the new projects that will be available in FFY12 and the types of work DBEs are certified to perform.

The past performance and capacity of DBEs based upon expenditures over the last three (3) federal fiscal years is approximately 12.0% (\$236M) (refer back to Table 2, page 2). Considering the work areas DBEs are certified to perform and the type of work that will be available on FFY12 projects, new contract opportunities for DBEs in FFY12 could provide as much as \$38M, or 9.2% of federal dollars (Refer to Page 3, Table 3). The total DBE dollars in Tables 2 & 3 equal \$274M. The total dollar amount in Tables 2 & 3 equals \$2376M. Based on this, the average of DBE past performance and anticipated DBE new contracts opportunities is 11.5%.

In adjusting the Base Figure, SCDOT took into consideration the possible impact of its outreach efforts to grow new DBE firms in FFY12. These efforts will include training sessions, to include the Entrepreneurial Development Institute (EDI) sponsored by SCDOT, Business Development Academy (BDA), Mentor-Protégé Program (MPP), procurement/outreach fairs and supportive services assistance provided to DBEs by SCDOT staff. Although contracting opportunities may be limited to an average of 9.2% of the federal program based on the items of work DBEs are currently certified to do, outreach efforts should continue to encourage the growth of new DBE firms and the expansion of DBE firms

into new areas of work. SCDOT anticipates its increased efforts will encourage additional DBE participation. SCDOT is also encouraged by the continued interest that DBEs have shown in the state set-aside program, which indicates a strengthening of the DBE capacity.

Taking all these factors into consideration, SCDOT determined that it was reasonable to adjust the Base Figure to 11.5%. In accordance with 49 CFR 26, the overall goal will be compared to the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of the fiscal year.

Adjusted Base Figure = 11.5%

III. Step Three: Express overall goal as a percentage of Federal funds – 49 CFR §26.45(e) (1)

Based upon the above methodology, SCDOT set its **FFY12 Overall DBE Goal at 11.5%**.

Step Four: Race Conscious versus Race Neutral Methods – 49 CFR §26.45(f) (3)

The regulations require SCDOT to determine how much of its FFY12 DBE goal it expects to meet through race-conscious methods and how much through race-neutral methods. In FFY10, SCDOT projected that of its overall goal of 11%, it would meet 3.5% through race-neutral methods and 7.5% through race-conscious methods.

SCDOT examined its record of accomplishment on DBE participation for projects closed out in the past three (3) full fiscal years ('08,'09 & '10), looking specifically at the break down between race-neutral and race conscious-participation. SCDOT measures race-conscious participation by counting payments made to DBEs to fulfill contract goals. SCDOT measures race-neutral participation by counting payments made to DBEs in excess of contract goals or payments made to DBEs on contracts where no DBE goal has been set. The amount of race-conscious or race-neutral participation can only be determined after projects are closed out and all payments have been verified (these expenditures are summarized below in Table 5).

Table 5 – Expenditures to DBEs with Race Neutral/Race Conscious Breakdown¹
(Completed Projects Only)

2008 Goal = 10.5% (Race-neutral Goal = 3.0% Race-conscious Goal = 7.5%)
2009 Goal = 10.7 % (Race-neutral Goal = 3.2% Race-conscious Goal = 7.5%)
2010 Goal = 11.0% (Race-neutral Goal = 3.5% Race-conscious Goal = 7.5%)

FFY	Total Expenditures	Expenditures to DBEs	DBE	R/N% ²	R/C% ³
2008	\$ 678M	\$ 86M	12.7%	3.1%	9.6%
2009	\$ 901M	\$ 114M	12.7%	5.8%	6.9%
2010	\$ 384M	\$ 36M	9.3%	3.3%	6.0%

Source: FHWA Uniform Reports of DBE Awards and Payments

1- Table 5 is based upon projects closed out in the indicated FFY.

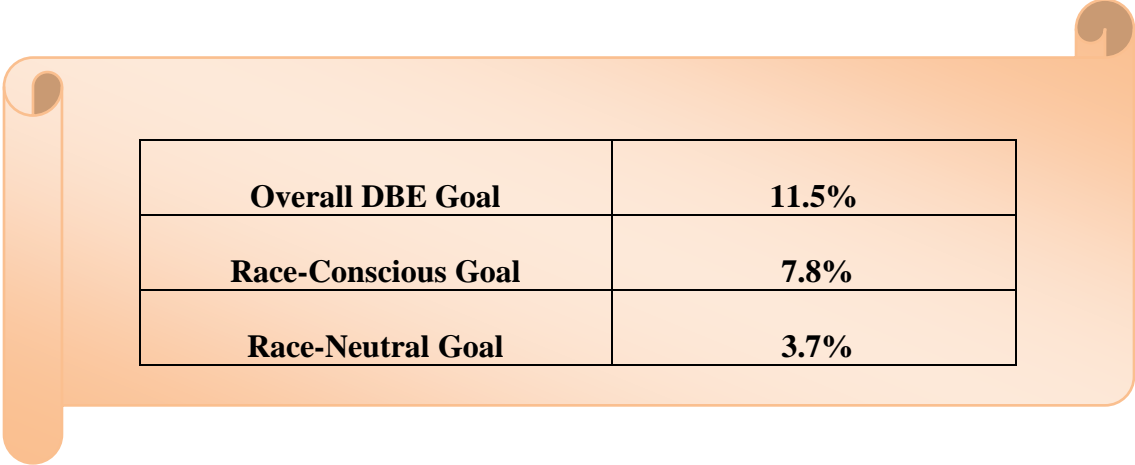
2- Race-neutral participation Rate – includes either DBE expenditures above the contract goal or DBE expenditures on contracts with no goals.

3- Race conscious participation rate – includes DBE expenditures to meet contract goal.

Race-neutral participation - SCDOT achieved 3.1% of its race-neutral goal in FFY08. Additionally in FFY09, the department achieved 5.8% race neutral participation, exceeding the established goal by 2.8%. In FFY10, SCDOT achieved 3.3% in race-neutral participation. In keeping with the mandate to meet the maximum feasible portion of the overall goal by race-neutral means, the agency will be placing more emphasis on the area of professional services. Therefore, SCDOT proposes to raise its FFY12 race-neutral goal to 3.7%.

Race-conscious participation - SCDOT achieved a 9.6% race-conscious utilization exceeding the FFY08 race-conscious ("contract") goal of 7.5% by 2.1%. In FFY 09, the department attained 6.9% of its race-conscious goal and 6.0% of the stipulated goal in FFY 10. The average attainment of race-conscious goals in the past three (3) completed fiscal years is 7.7%. Taking this into consideration, the department feels it is reasonable to raise the bar and establish the race-conscious goal at 7.8% for FFY12.

Overall goal - Based on the above analysis, SCDOT proposes to establish its **FFY12** DBE goals as follows:



Overall DBE Goal	11.5%
Race-Conscious Goal	7.8%
Race-Neutral Goal	3.7%

Public Participation – 49 CFR §26.45(g) (1)

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

In an effort to satisfy the requirement of public participation, SCDOT held public consultation meetings February 3, 2011 in Columbia South Carolina; and February 7, 2011 in North Charleston South Carolina. SCDOT disseminated over 1400 meeting notifications to firms and other interested parties. The invitees included the current listings of all firms on the South Carolina Unified Certification Program (UCP) Directory, SCDOT's Pre-qualified contractors and SCDOT's consultants at the time of the mailing. Additionally, SCDOT invited UCP partners, along with Metropolitan Planning Organizations (MPOs), Council of Governments (COGs) and transit providers. Invitations also included various minority and women's organizations, to include but not limited to, the NAACP, Urban League, Hispanic Contractors and South Carolina Women in Business. Additionally, the Carolina Associated General Contractors (AGC) and Business Development Centers from Benedict College, South Carolina State University, University of South Carolina, Clemson University, and Winthrop University were included to provide feedback. Invitations were extended to members of the South Carolina Legislative Black Caucus, the Governor's Office of Small and Minority Business Assistance, along with local Federal Highway Administration representatives. A collective total of one hundred (100) individuals (75 DBE firms/other organizations) were in attendance. In an effort to satisfy both the highway and transit requirements relating to the establishment of DBE goals, the department opted to conduct "2-in-1" meetings to satisfy goal setting requirements of both the Federal Highway Administration and the Federal Transit Administration. Based on this, SCDOT selected two (2) DBE certified firms to serve as facilitators (Maxim Communications Group, Inc.) to function as the lead facilitator, as well as conduct the highway breakout session and Marybo Enterprises to conduct the transit breakout session during the consultation meetings). In preparing for the meetings, SCDOT met with facilitators and with the FHWA-SC Division to develop an agenda and discuss the logistics of the consultation meetings. Invitations were developed and SCDOT sent meeting notifications to firms and other interested parties.

The actual meetings consisted of three (3) parts. Session 1 was the general session, and Session 2 consisted of two breakout meetings (highway and transit), which ran concurrently. The final part of the meeting consisted of the group coming back together for the meeting wrap up and closing remarks. SCDOT considered the input from these groups in setting the proposed goal as required by 49 CFR §26.45(g) (1).

Additionally, SCDOT will publish the attached Notice of Proposed FFY12 DBE Goal soliciting comments from the public in following local newspapers: Millennium Magazine, Black News, Carolina Panorama, Hispanic Connections, The Community Times and Midlands Live, all minority focused publications; The Greenville News; The Charleston Post and Courier; The State (Columbia, SC); The Sun News (Myrtle Beach, SC); and South Carolina Business Opportunities (State Procurement publication). SCDOT will also publish the Notice and a copy of the Goal Statement and Methodology and solicit input from the public on SCDOT's website at <http://www.scdot.org/doing/dbe.shtml>.

The Goal Statement and Methodology will be available for inspection for a period of 30 days from the date of the notice, during the hours of 8:30 a.m. and 5:00 p.m. at SCDOT Headquarters, 955 Park Street, Columbia, SC, in the Business Development Center, Room 107 and on SCDOT's web site at <http://www.scdot.org/doing/dbe.shtml>. SCDOT will accept written comments on the goals for 45 days from the date of the notice. Written comments must be sent to Ms. Paula Hollis, SCDOT, and P.O. Box 191, Columbia, SC 29202.

SCDOT will also send letters to persons who would be expected to be interested in the DBE program, enclosing copies of the proposed Goal Statement and Methodology and soliciting comments. Letters will be sent to the Executive President of the Carolinas AGC (prime contractors association); South Carolina Commission on SC Minority Affairs (entity representing multiple minority interests); Chair of the South Carolina Legislative Black Caucus; Hispanic Contractors Association of the Carolinas, the South Carolina Women in Business and Alliance for Women c/o Columbia College.

SCDOT will consider any written comments it receives from the public in setting its final goal. After consideration has been given, SCDOT will issue its final goal statement and methodology. SCDOT believes that this procedure satisfies the public participation requirements set forth in 49 CFR §26.45(g) (1). Additionally, the department feels that its goal methodology is consistent with the requirements of 49 CFR §26.45.